

HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CITY OF ISSAQUAH, a municipal
corporation,

Plaintiff,

v.

ORA TALUS 90, LLC, a Delaware limited
liability company; and RESMARK EQUITY
PARTNERS, LLC, a Delaware limited
liability company

Defendants.

Case No.: 18-cv-00910 RSM

ANSWER TO COMPLAINT

ORA Talus 90, LLC (“ORA Talus”) and Resmark Equity Partners, LLC (“Resmark”),
by their attorneys, for their answer to the Complaint herein, allege:

AS AND FOR ANSWER TO THE
ALLEGATIONS REGARDING “PARTIES”
ALLEGED IN THE COMPLAINT

1. Admit the allegations contained in paragraph “1” of the Complaint.
 2. Admit the allegations contained in paragraph “2” of the Complaint.
 3. Deny each and every allegation contained in paragraph “3” of the Complaint,
- except admit that Resmark is a Delaware limited liability company and an affiliate of ORA

1 Talus and that Resmark is authorized to conduct business in the State of Washington including
2 King County.

3 **AS FOR AN ANSWER TO THE**
4 **ALLEGATIONS REGARDING**
5 **“JURISDICTION AND VENUE”**
6 **ALLEGED IN THE COMPLAINT**

7 4. Deny each and every allegation contained in paragraph “4” of the Complaint.

8 5. Deny each and every allegation contained in paragraph “5” of the Complaint,
9 except admit that plaintiff alleged the purported jurisdiction of the court in which the Complaint
10 was filed, that plaintiff alleged the purported jurisdiction of that court over the parties to the
11 action and that this Court has subject matter jurisdiction over this action and personal
12 jurisdiction over the parties.

13 6. Deny each and every allegation contained in “6” of the Complaint, except admit
14 that, at certain times, including in 2015 to the present, ORA Talus has engaged in certain
15 business in King County, Washington.

16 7. Deny each and every allegation contained in paragraph “7” of the Complaint,
17 except admit that plaintiff alleged the purported venue in the court in which the action was filed
18 and that venue is proper in this Court.

19 **AS AND FOR ANSWER TO THE**
20 **“FACTUAL ALLEGATIONS”**
21 **ALLEGED IN THE COMPLAINT**

22 8. Upon information and belief, admit the allegations contained in paragraph “8” of
23 the Complaint.
24

1 9. Admit the allegations contained in paragraph “9” of the Complaint.

2 10. Deny each and every allegation contained in paragraph “10” of the Complaint,
3 except admit that, on July 2, 2014, ORA Talus acquired title to Talus Parcel 9 from Talus 9
4 Investment, LLC and that the deed conveying title was recorded on July 2, 2014.

5 11. Upon information and belief, admit the allegations contained in paragraph “11”
6 of the Complaint.

7 12. Deny each and every allegation contained in paragraph “12” of the Complaint,
8 except admit that Talus Parcel 9 is located to the west of the intersection of Shangri La Way
9 NW and NW Talus Drive and to the east of Talus Parcel 8 and that Shangri La Way NW is a
10 public right of way that runs along the boundary between Talus Parcel 9 and Talus Parcel 8.

11 13. Deny that they have any knowledge or information sufficient to form a belief as
12 to the truth of the allegations contained in paragraph “13” of the Complaint, except admit that
13 Talus Parcel 9 is located on relatively steep hillside and is directly below Talus Parcel 8.

14 14. Deny each and every allegation contained in paragraph “14” of the Complaint,
15 except admit that the City of Issaquah (the “City”) entered into a development agreement in or
16 about December 1999 which was later updated, and respectfully refer to the development
17 agreement and the update for the true and accurate terms thereof.

18 15. Deny each and every allegation contained in paragraph “15” of the Complaint,
19 except admit that the City has engaged in subdivision and permitting processes.

20 16. Deny each and every allegation contained in paragraph “16” of the Complaint,
21 except admit that environmental impact statements were published by the City, and respectfully
22 refer to those statements for the true and accurate terms thereof.

23 17. Admit the allegations contained in paragraph “17” of the Complaint.
24

18. Admit the allegations contained in paragraph “18” of the Complaint.

19. Admit the allegations contained in paragraph “19” of the Complaint.

20. Admit the allegations contained in paragraph “20” of the Complaint.

21. Upon information and belief, admit the allegations contained in paragraph “21” of the Complaint.

22. Deny each and every allegation contained in paragraph “22” of the Complaint, except admit that in November 2015 and subsequently, efforts were undertaken at the direction of Terra Talus, LLC or its affiliates to stabilize Talus Parcel 9 and prevent or minimize damage to that parcel and other property, and respectfully refer to the actual records for that work for the true and accurate description of that work.

23. Deny each and every allegation contained in paragraph “23” of the Complaint, except admit that subsequent to the landslide on Talus Parcel 9, monitoring of Talus Parcel 9 was implemented, which monitoring has continued to the present day, and that on February 22, 2016, Terra Associates submitted a report entitled “Critical Area Report Talus Parcel Landslide” and that consultants and/or employees of the City peer reviewed that report and made written comments on it to which Terra Associates responded, and respectfully refer to the report, the comments and the response for the true and accurate terms thereof.

24. Deny each and every allegation in contained in “24” of the Complaint.

25. Deny each and every allegation in contained in “25” of the Complaint.

26. Deny each and every allegation in contained in “26” of the Complaint.

**AS AND FOR AN ANSWER TO THE
“CAUSE OF ACTION” ALLEGATIONS
ALLEGED IN THE COMPLAINT**

27. As and for their response to paragraph “27” of the Complaint, repeat and reallege their responses to paragraphs “1” through “26”, inclusive, of the Complaint with the same force and effect as if said responses had been fully repeated and realleged at length therein.

28. Deny each and every allegation contained in paragraph “28” of the Complaint.

29. Deny each and every allegation contained in paragraph “29” of the Complaint.

30. Deny each and every allegation contained in paragraph “30” of the Complaint.

31. Deny each and every allegation contained in paragraph “31” of the Complaint.

AS AND FOR A

FIRST AFFIRMATIVE DEFENSE

32. The Complaint and each and every claim for relief and cause of action alleged therein fail to state a claim upon which relief may be granted against ORA Talus or Resmark.

AS AND FOR A

SECOND AFFIRMATIVE DEFENSE

33. Plaintiff’s claims against ORA Talus and Resmark, if any, are barred by plaintiff’s unclean hands.

AS AND FOR A

THIRD AFFIRMATIVE DEFENSE

34. Plaintiff’s claims against ORA Talus and Resmark, if any, are barred by plaintiff’s failure to comply with obligations with which plaintiff was required to comply and that compliance was a condition precedent to seeking the relief plaintiff seeks in the Complaint.

AS AND FOR A

FOURTH AFFIRMATIVE DEFENSE

35. Plaintiff is equitably estopped from prosecuting or recovering as against ORA

1 Talus or Resmark upon each and every claim for relief and cause of action alleged in the
2 Complaint.

3 **AS AND FOR A**

4 **FIFTH AFFIRMATIVE DEFENSE**

5 36. Plaintiff damages, if any, were fully or partially caused by acts and/or omissions
6 of plaintiff and/or plaintiff's affiliates, agents, or representatives or third parties who were not
7 employees, agents or representatives of ORA Talus or Resmark.

8 37. By reason of the foregoing, any damages or liability assessed against ORA Talus
9 or Resmark must be reduced, in whole or in part, by the damages caused by plaintiff and/or
10 plaintiff's affiliates, agents or representatives and/or such third parties.

11 **AS AND FOR A**

12 **SIXTH AFFIRMATIVE DEFENSE**

13 38. Damages incurred by ORA Talus or Resmark as a result of actions or failures to
14 act by plaintiff must be set off against damages, if any, that ORA Talus or Resmark is found to
15 owe to plaintiff.

16 **AS AND FOR A**

17 **SEVENTH AFFIRMATIVE DEFENSE**

18 39. In any event, the failure of plaintiff to mitigate its damages, if any, bars plaintiff
19 from the recovery of damages or other relief against ORA Talus or Resmark.

20 WHEREFORE, defendants ORA Talus and Resmark demand that judgment be entered
21 herein (a) dismissing each and every claim for relief and cause of action alleged against
22 defendants ORA Talus and Resmark in the Complaint; (b) awarding to defendants ORA Talus
23 and Resmark, ordering plaintiff to pay to defendants ORA Talus and Resmark, ORA Talus's
24

1 and Resmark's costs and disbursements herein, including reasonable attorney's fees; and (c)
2 granting defendants ORA Talus and Resmark such other and further relief as to this Court
3 seems just and proper.

4 DATED this 23rd day of July, 2018.

5 HARRIGAN LEYH FARMER & THOMSEN LLP

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CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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